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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/594,406

11/01/2007

Robert Lalesse

VER-210XX

1931

207 7590 02/16/2010  
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EXAMINER

ADAMS, GREGORY W

ART UNIT

PAPER NUMBER

3652

MAIL DATE

DELIVERY MODE

02/16/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/594,406	<b>Applicant(s)</b> LALESSE ET AL.	
	<b>Examiner</b> GREGORY W. ADAMS	<b>Art Unit</b> 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____.                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/26/06; 8/11/08</u> .  | 6) <input type="checkbox"/> Other: ____.                          |

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

With respect to claims 31, 37, 41 & 44 the claimed invention(s) are directed to non-statutory subject matter. In this case the applicant's claims fail to be statutory under 35 USC 101 because the claims fail to recite a particular statutory class (i.e. a method or a process, an apparatus, a composition of matter or an article of manufacture (In re Nuijten, 84 USPQ2d 1495, 1501 (CAFC 2007))) and are thus not statutory under 35 USC 101. For example "use of an apparatus" or a "method requiring an apparatus" do not inform as to how the use or method are accomplished. The examiner notes that if the applicant amends the claim to be a process (i.e. a method), then the process or method in the claim must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski, Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876). And, when referring to another claim within an independent claim, the reference should appear within the body of the claim; a reference that appears within a preamble is accorded little if any patentable weight.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-46 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "and/or" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are required or merely optional.

See MPEP § 2173.05(d).

Regarding claims 31, 37, 41 & 44 statutory class of invention is unclear.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-3, 14-22, 24-30, 32, 33, 34, 35, 36, 38, 43, 45, 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over VANHOUTTE et al. (EP 0 568 735 A1) in view of Anderson (US 5,844,807) and Gepfert et al. (US 5,387,072). VANHOUTTE discloses-

- positioning means 13-15, 17
- conveying means provided with a first conveyor 8 and a second conveyor 6,
- stacking area (indicated generally as 22), and
- stacking pattern maintaining means 11, 12.

Anderson discloses building a layer of space articles of different sizes and shapes, gripping said layer while placed on a first conveyor 33, and maintaining said spacing during transport. Anderson teaches "it is generally desirable to form stacks having the same outside dimensions, particularly around the perimeter, so that the stacks substantially conform to the area of the pallets on which they are formed, provide uniformity in size and shape for shipping and storage, and can be wrapped or banded with equipment and materials operated in a uniform manner. Thus, it is often desirable or necessary to form tiers of articles in which there are gaps or spaces between adjacent articles or adjacent rows of articles in order that the tier assumes the shape of the outer perimeter of the stack being formed. For space and shape optimization, it is also often necessary to rotate articles 90.degree. about a vertical axis with respect to other articles forming a tier or one of the tier-forming rows." C1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of VANHOUTTE et al. to maintain a stacking pattern during

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transport, as per the teachings of Anderson, for shipping and storage of uniformly dimensioned pallets.

Gepfert et al. discloses a stacking pattern maintaining means 22, 23 which maintains a stacking pattern during transport. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of VANHOUTTE to include a stacking pattern maintaining means during transport, as per the teachings of Gepfert et al., to reduce the amount of space required to create a layer. C1.

Claims 4-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over VANHOUTTE et al. in view of Anderson and Gepfert and further in view of Sehrt (US 5,688,013). Sehrt discloses a stacking pattern maintaining means comprising filling elements 1 which is designed for filling some spaces between articles 6, 6, that are vertically moveable via a drive means 4, 5, 7. Sehrt teaches that holders such as Gepferts are well known replacements for “a number of mechanical, two- or multi-finger grippers” and also “for example, vacuum grippers, which involve a large outlay to generate the vacuum; again, these can only grip and handle objects which are in a defined position and have relatively large, non-porous and smooth surfaces.” C1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of VANHOUTTE to include filling some spaces between articles to hold relative positions thereon, as per the teachings of Sehrt, to grip and handle objects without a defined position and to hold articles having “relatively large, non-porous and smooth surfaces.”

Claims 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over VANHOUTTE et al. in view of Anderson and Gepfert and further in view of McPeck et al. (US 3,624,782). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the first conveyor of VANHOUTTE to include a movable plate 17, as per the teachings of McPeck, to reduce the degree of complexity often found in these machines that requires highly qualified operators and technicians to maintain them.

***Allowable Subject Matter***

Claims 39-40 & 42 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY W. ADAMS whose telephone number is (571)272-8101. The examiner can normally be reached on M-Th, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory W Adams/  
Primary Examiner, Art Unit 3652